

Consideration of Guidelines for Exceptions to Existing Board Orders

Background: Over the last several years, the Board has seen a significant increase in requests for exceptions to Board Orders. Often these orders have been agreed to by the nurse based on alleged violations at issue. What used to be a rare request appears to have become routine for any individual unhappy with his/her Agreed Order. More frequently, even those individuals whose exceptions have been granted seek to return to the Eligibility and Disciplinary Committee for additional modifications to the Agreed Order.

Board Rule 211.7(h) provides that the Executive Director shall establish guidelines for review and approval of requests for exceptions to existing Board Orders, including how often such requests may be made. The last time these guidelines were approved was in 2014. Attached hereto as Attachment "A" are new Proposed Guidelines for Exceptions to Existing Board Orders designed to improve the process and are consistent with how exception requests should currently be processed.

Board Action: Move to approve the attached Guidelines for Exceptions to Existing Board Orders.

GUIDELINES FOR EXCEPTIONS TO EXISTING BOARD ORDERS

PURPOSE

Pursuant to 22 Tex. Admin. Code §211.7(h), the Executive Director may grant a request for exception (request) to a Board Order if he/she is of the opinion that the requested relief falls within, and is consistent with, public safety and the parameters of 22 Tex. Admin. Code §213.33(b), (g), and (h). Otherwise, the request may be scheduled without prejudice before the next practicable Eligibility and Disciplinary Committee meeting for review and determination.

These guidelines are intended to establish general parameters regarding exceptions to Board Orders and to inform licensees, applicants, petitioners, and the public of these parameters. These guidelines are not necessarily meant to be exhaustive and may not specifically apply in a particular case or in all situations. Although these guidelines establish general criteria for exceptions to Board Orders, each case must be considered on its own merit and unique circumstances.

ELIGIBILITY REQUIREMENTS

- A Board Order must be final and effective for at least six months;
- All remedial education must be completed before submitting an exception;
- No open investigations;
- License must be in Active status with the Board;
- Must have more than two quarters (6 months) remaining;
 - An exception to this requirement is if your employer's policy and procedures have changed due to a merger, taken over by new management or you have documentation that you are leaving the country (military).
- Request must be in writing (email is acceptable); and
 - Clearly identify those stipulations or terms of the Order to be modified and the reasoning for the request
 - The reason(s) for the request must be stated in writing
- Submit one request per calendar year
 - If a previous request was denied, you must wait at least one year from the date of the denial to submit another request

If any of the above requirements are not satisfied, your request will be denied.

Request for Exception(s) to a prior Board Order is not intended to excuse an individual from completing the requirements of the Board Order.

Rather, requests should be limited in nature and any granted relief shall be narrowly tailored consistent with the original purpose of the Order.

The Findings of Fact and Conclusions of Law in the previous Board Order will not be altered, eliminated, or amended, unless required by law.

FOR CONSIDERATION OF AN EXCEPTION REQUEST

Ways to submit your written Exception Request to the Board:

Mail To:
Texas Board of Nursing
Legal Department/Exception Request
333 Guadalupe Street, Suite 3-460
Austin, Texas 78701

Fax To:
Attention: Legal Department
(512) 305-8101

Please include your license number(s), a good phone number, and an email address on your exception request to prevent delay.

POTENTIAL 90-DAY PROCESS

Once your Exception Request is received, it can take up to ninety days to process. If your request falls within the guidelines for being granted pursuant to 22 Tex. Admin. Code §211.7(h) by the Executive Director, it can take two weeks up to thirty days to finalize the Exception or Modification. If you are required to appear before the Eligibility and Disciplinary Committee (Committee) because your request falls outside of the parameters for Executive Director's approval, it will take longer. The Committee meets once a month (eight times a year) and there are a limited number of appearances accepted for each meeting.

You will receive instructions and further details via certified mail. You may withdraw your request any time before being placed on the meeting Agenda.

REQUEST FOR MORE DOCUMENTATION

Legal staff will review your request and you may be requested to submit documentation before further consideration. You are advised to provide said documents as soon as reasonably possible. If you are nonresponsive to the Board's attempts to reach you regarding your request and/or the requested documents are not received within thirty days your request will be denied.

If you are required to submit an evaluation by a Board approved physician before further consideration or required by the Committee, you must provide the report within six months of the request. At the Board's discretion, the deadline may be extended.

If you are required to submit documentation to the Board by the Committee, you must provide staff with the documentation within thirty days of the request. If staff does not have your documentation within thirty days, your request will be denied.

ONE REQUEST PER YEAR

If your request is granted or denied for any reason, you must wait one year from the date granted or denied before you can submit a new request.

SUPPORTING DOCUMENTARY EVIDENCE

Your request should be accompanied with documentary evidence.

We Accept:

- Letters of Support/Letters of Recommendation
 - i.e. Professors, Sponsors, Coworkers, Patients, Support Group Lead, etc.
- Alcohol Anonymous/Narcotics Anonymous attendance logs, random drug screens, drug testing results, etc.

DRUG TESTING STIPULATION

If you are submitting a request for reduction in or eliminating drug testing, your request should be accompanied with sobriety documentation, i.e. a statement from your sponsor or proof of compliance with an in-patient or out-patient assistance program.

The elimination of drug testing requirements are rarely granted absent compelling reasons.

SUPERVISION STIPULATION

If you are submitting a request to modify a work restriction, include as much detailed information as possible to assist in determining if the requested relief is appropriate and in the interests of public safety. This may include a letter from your immediate supervisor explaining the need for this stipulation to be modified.

The elimination of a supervision stipulation will be rarely granted absent of compelling reasons.

The Board may approve a modification to your Board Order allowing you to work with a specific employer when it is established that such relief is appropriate and in the interest of the public.

Required:

- Statement from the potential employer stating their desire to hire you for the position and detailing specific job duties that will affect the stipulations in the Order, i.e. addressing how will the employer accommodate the supervision restriction.
- A copy of the job description or included in the employer's statement.

Please note that if you change employers with this specific employer approval in effect, you may be in violation of your Board Order.

REQUESTING AN UNENCUMBERED LICENSE

If you are requesting an unencumbered license or full restoration of your license, you will have to appear before the Committee. Committee meetings are held once a month approximately eight times per year. There are a limited number of appearances accepted for each Committee meeting.

REQUESTING MORE THAN ONE EXCEPTION/MODIFICATION

Request relief from all the stipulations you may have an issue with or concerns about, again, the reasoning for each must be clearly stated.

OTHER INFORMATION

Best Practices for submitting Letters of Support or Recommendations:

- Obtain a signature
- Written on a professional letterhead (if applicable)
- Closing should include current contact information
- Phone number of reference for confirmation

Nurse Employment vs Standard Employment:

In order to complete the terms of your Board Order, you must work as a Nurse (a position that requires a nursing license to perform patient care). Only employment in a nursing position begins the Board's monitoring process and count towards completion of your Board Order.

If you are unable to gain employment as a nurse, you may work in any position that does not require your nursing license including, but not limited to, administration, health insurance, coordinating, customer service, etc. During this time, your employment, time, and credits will not be monitored or counted as completion or substitution of any terms of the Order.

You are encouraged to be represented by legal counsel of your choosing, at your expense.